

-From Definitions-

“Constructive Knowledge” as used in only Section 5.5 includes the:

- 1) Review of aerial photos;
- 2) Review of city, county and state planning, building, title and deed records;
- 3) Review of city, county, state, federal and other readily available environmental records and documents;
- 4) Review of real estate disclosure documents and
- 5) Performance of a visual site inspection

“Non-Regulated Asbestos Contaminated Soil (Non-RACS)” means soil that contains only:

- 1) Intact non-damaged non-friable asbestos containing materials;
 - 2) Non-friable asbestos containing materials that have strong internal cohesiveness and that do not have a high probability to release fibers. The following materials are predetermined to be non-RACS:
 - a. Vinyl asbestos flooring materials and their associated pliable mastics,
 - b. Tar impregnated or asphaltic materials,
 - c. Elastic, pliable, or rubberized materials;
- Or,
- 3) Other asbestos containing materials as approved by the Department.

“Regulated Asbestos Contaminated Soil (RACS)” means soil or ash containing:

- 1) Friable asbestos containing materials and surrounding soil (as defined in BMP 6); or
 - 2) Damaged non-friable asbestos containing materials that have a propensity to release fibers, with the surrounding soils (as defined in BMP 6), including but not limited to:
 - a. asbestos cement products; or
 - b. plaster
- or,
- 3) Soil known to contain non-visible asbestos based on: observation, constructive knowledge, or documentable evidence; or,
 - 4) Other materials as determined by the Department to be non-internally cohesive and/or having a high probability to release fibers and surrounding soil (as defined in BMP 6).

-From Applicability-

5.5.1 APPLICABILITY

The requirements of this Section 5.5 are triggered when:

- (A) The owner or operator of any property with regulated asbestos contaminated soil (RACS) at which soil disturbing activities encounters RACS.
- (B) An owner or operator with constructive knowledge that RACS may be encountered, but without confirmation of the presence of RACS, is only subject to the initial training requirements (ACS awareness). If suspect RACS is encountered:
 - a. Work must be stopped until the results of the material sample either confirms or denies the presence of RACS; or
 - b. The suspect RACS must be assumed to contain asbestos and managed in accordance with Section 5.5.

The owner or operator is required to make a reasonably diligent effort to determine the potential presence of RACS prior to the commencement of soil disturbing activities (e.g. if records indicate that no structures or disposal facilities have existed on the subject property, then no further inquiries would be necessary).

An owner or operator, who does not have actual or constructive knowledge that RACS may be encountered at the point of soil disturbing activities, does not have a duty under these regulations to sample or otherwise investigate for regulated asbestos-contaminated soil prior to commencing soil disturbing activities at the site

-From Exemptions-

(E) Non-RACS, as defined in Section 1.2 of these Regulations, meeting the following criteria is not subject to this Section 5.5, but must be managed in accordance with local, state, and federal laws and with other sections of these Regulations as applicable.

(1) Non-RACS is managed in a manner that will not crumble, pulverize, grind, crush, or reduce the ACM to powder or otherwise change the physical characteristics of the material such that the material no longer has strong internal cohesiveness or increases the material's propensity to release fibers; and,

(2) ACM portion of Non-RACS is not weathered to the point of losing internal cohesiveness or to the point that it has a propensity to release fibers; and,

(3) ACM portion of Non-RACS has not been rendered friable

(F) Asbestos waste disposal areas that have a Certificate of Designation are exempted from this Section 5.5 of the Solid Waste Regulations.